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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,576	12/01/2003	Kirill Ostanin	60409CON(50370)	9888

21874 7590 12/20/2006
EDWARDS & ANGELL, LLP
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BOSTON, MA 02205

EXAMINER

LI, RUIXIANG

ART UNIT	PAPER NUMBER
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1646

MAIL DATE	DELIVERY MODE
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12/20/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/729,576	Applicant(s) OSTANIN ET AL.	
	Examiner Ruixiang Li	Art Unit 1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
 6. ☒ Newly proposed or amended claim(s) 26 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: 7, 8, 12, 13, 15, 21, 22, and 26-34.
 Claim(s) rejected: 1-4, 6, 9-11, 14, 16-20, 23-25 and 35-38.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 5. Applicant's reply has overcome the following rejection(s):
If the amendment were entered, the following rejections would be overcome:

(a). the rejection of claims 6, 9, and 10 under 35 U.S.C. 103(a) as being unpatentable over Trueheart et al. (U.S. Patent No: 6159705, December 12, 2000, filed on September 24, 1997) in view of Cappellaro et al. (EMBO J. 10: 4081-4088, 1991), and further in view of Alberts et al. (Molecular Biology of the Cell, 2nd Edition, Garland Publishing, Inc, 1989) has been overcome; however, a new rejection is likely applied in view of the amendment to 1, from which claims 6, 9, and 10 depend.

(b). the rejection of claims 18-20 and 23-25 under 35 U.S.C. 103(a) as being unpatentable over Trueheart et al. (U.S. Patent No: 6159705, December 12, 2000, filed on September 24, 1997) in view of Cappellaro et al. (EMBO J. 10: 4081-4088, 1991), and further in view of both Alberts et al. (Molecular Biology of the Cell, 2nd Edition, Garland Publishing, Inc, 1989) and Nare et al. (Analytical Biochemistry, 267:390-396, 1999) has been overcome by Applicants' amendment; however, a new rejection is likely applied in view of the amendment to 1, from which claims 18-20 and 23-25 depend.

(c). the rejection of claims 36 and 37 under 35 U.S.C. 103(a) as being unpatentable over Trueheart et al. (U.S. Patent No: 6159705, December 12, 2000, filed on September 24, 1997) in view of Cappellaro et al. (EMBO J. 10: 4081-4088, 1991), and further in view of Reppert (U.S. Patent No. 6037,131, March 14, 2000, filed on March 29, 1999) has been overcome by Applicants' amendment; however, a new rejection is likely applied in view of the amendment to 1, from which claims 36 and 37 depend.

(d). the rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over Trueheart et al. (U.S. Patent No: 6159705, December 12, 2000, filed on September 24, 1997) in view of Cappellaro et al. (EMBO J. 10: 4081-4088, 1991) is made moot by canceled claim.

Continuation of 11. does NOT place the application in condition for allowance because:

(i). The rejection of claim 1-4, 14, 16, 17, 35, and 38 under 35 U.S.C. 103(a) as being unpatentable over Trueheart et al. (U.S. Patent No: 6159705, December 12, 2000, filed on September 24, 1997) in view of Cappellaro et al. (EMBO J. 10: 4081-4088, 1991) is maintained for the reasons set forth in the previous office action.

(ii). the rejection of claims 9 and 10 under 35 USC 112, 2nd paragraph is maintained because the amendment to the claims still causes the confusion about reporter and reporter gene.

(iii). claims 27 and 30 are objected to because they recite "detection molecule", which appears to be "detector molecule".



RUIXIANG LI, PH.D.
PRIMARY EXAMINER